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EXAMINER

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Please find below and/or attached an Office communication concerning this application or proceeding.

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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 10/651,443
Filing Date: August 30, 2003
Appellant(s): MCMURRAY, BRIAN L.

Kody Jones
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 7/2/07 appealing from the Office action mailed 11/1/06.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

5,533,789	McLarty, III et al	7-1996
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(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claims 1-11 and 13-19 are rejected under 35 U.S.C. 103(a) as being anticipated by McLarty III et al (5,533,789).

The disclosure of McLarty, III et al (hereinafter McLarty) teaches a knitted colorfast material substantially as claimed including a first component (30) with substantial stretch properties and a second component (34) with substantially lower stretch properties than those of

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the first component. The material is a fabric manufactured by knitting and the components are dyed prior to fabric formation for providing a material having a color-fastness and color-uniformity in both stretched and relaxed states. Note that the material (34) is solution dyed. See column 3, lines 44-48. Solution dyed yarns are known to have dye distributed evenly throughout their structure since pigment is added to melted polymer before the yarn is formed. McLarty does not teach the first component (30) being solution dyed. It would have been obvious at the time the invention was made to provide the first yarn component of McLarty as a solution dyed component so that the dye is distributed evenly throughout the yarn rather than generally on the yarn surface.

(10) Response to Argument

Bridging pages 8 and 9 of the brief, Appellant alleges that the examiner has failed to establish a prima facie case of obviousness. The examiner disagrees. Initially it should be noted that appellant's claimed invention as presented in claim 1 contains two elements namely a first, solution dyed component with substantial stretch properties and a second component with substantially lower stretch properties than those of the first component. The remainder of the claim sets forth that the components are dyed prior to fabric formation for providing a knitted fabric having color-uniformity in both stretched and relaxed states.

Each of the two components set forth in claim 1 find an equivalent in the prior art of McLarty. Specifically, as seen in figures 6 and 7, McLarty discloses a first component (30, elastomeric monofilament, see column 3, lines 32-37) with substantial stretch properties and a second component (34, polyester, see column 3, lines 44-48) with substantially lower stretch properties than those of the first component. While McLarty does not set forth that the first

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stretch component (30) is solution dyed, McLarty does indicate that the second component (34) is solution dyed. (column 3, line 45). Solution dyeing is a well known yarn coloration process in which pigment is added to the polymer melt before it is extruded into yarn. The color, therefore, is an inherent part of the yarn itself and runs through the entire cross section of the yarn. Unlike a *surface* dyed yarn, if a solution dyed yarn were to experience surface wear or be cut the original color would still be seen throughout the yarn. On page 9 of the brief, Appellant has stated that dye being evenly distributed throughout the yarn is "basically a restatement of the definition of solution dyed yarn" thus agreeing with the examiner's position that those of ordinary skill in the art would have found it obvious to use solution dyed components for even dye distribution. It is the examiner's opinion that it would have been obvious at the time the invention was made to not only have the second component (34) solution dyed as indicated by McLarty but also to provide the first stretch component (30) as a solution dyed yarn so that the dye is distributed evenly throughout the yarn rather than generally on the yarn surface. Undoubtedly having dye distributed throughout a yarn is reasonable for a fabric which receives wear such as the seating fabric of McLarty.

On page 9, Appellant contends that yarn (30) of McLarty is on the underside of the fabric and is not seen on the surface of the fabric and therefor it would not be obvious to solution dye yarn (30). Appellant goes on to argue that even stretching of the fabric would not allow yarn (30) to be seen. However, as clearly shown in shown figure 6 of McLarty, yarn (30) is at least partially visible between laid in yarns (32) and stitch yarns (34). In addition, stretching of the elastomeric yarns (30 and 32) would certainly allow for greater visibility of yarn (30) since the distance between adjacent yarns would increase. Moreover, the wearing of top yarns 32 and

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34 would permit yarn 30 to be even more noticeable. Without a doubt yarn 30 is capable of being seen when viewing the surface of the fabric. As such solution dyeing of the yarn is both logical and obvious.

It is the examiner's opinion that McLarty teaches the invention substantially as claimed including solution dyed yarns (34). The only difference being that the stretch yarn (30) is not indicated as being solution dyed. It is not unreasonable to modify McLarty so that the remaining yarns are solution dyed including the stretch yarn (30) for the purpose of distributing dye evenly throughout the yarns rather than just on the yarn surfaces.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

/Danny Worrell/

Primary Examiner, Art Unit 3765

Conferees:

/Gary L. Welch/

SPE AU 3765

/Janet C. Baxter/

TC 3700 TQAS